

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of Rules and Regulations  
Implementing the Telephone Consumer  
Protection Act of 1991

CG Docket No. 02-278

Petition for Expedited Declaratory Ruling  
Clarifying 47 U.S.C. § 227(b)(1)(B) of the  
Telephone Consumer Protection Act

**Comments of Anthony Paronich in Opposition to Petition for Expedited Declaratory  
Ruling filed by Northstar Alarm Services, LLC**

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I represent consumers throughout the country who have been sent automated contacts in alleged violation of the Telephone Consumer Protection Act (TCPA). In recent years, a number of defendants have engaged in the use of “Soundboard technology” at issue in Northstar’s petition. Defendants routinely claim that these previously recorded scripts are not “pre-recorded messages” under the TCPA. The technology also deceives consumers. The Commission should deny Northstar’s petition.

Both the plain language of the TCPA and the Commission’s rules implementing the statute expressly and unequivocally regulate the prerecorded voice Soundboard calls. First, the TCPA’s regulation of nonconsensual calls to cellular telephone numbers categorically prohibits the mere *use of a prerecorded voice*. 47 U.S.C. § 227(b)(1)(A) (“it shall be unlawful . . . to make any [nonemergency and nonconsensual] call . . . using . . . an artificial or prerecorded voice” to cellular telephone numbers). The Commission’s implementing regulation tracks this language, providing that “no person or entity may . . . initiate any [nonemergency and nonconsensual] telephone call . . . using . . . an artificial or prerecorded voice” to a cellular telephone number. 47 C.F.R. § 64.1200(a)(1). Thus, the Commission should deny Northstar’s petition to the extent it seeks a declaratory ruling that these provisions do not apply to soundboard calls.

Moreover, Congress specifically intended soundboard calls to be covered. The legislative history confirms the TCPA’s application to calls in which a human being plays the prerecorded message *after* the initiation of the call:

“when a consumer answers the phone, a ‘live’ person can ask the consumer if he or she consents to listening to a recorded or computerized message. If the consumer indicates express consent, the ‘live’ caller may switch to a record-ed or computerized message. The Committee does not believe that this consent requirement will be an inordinate regulatory burden on the telemarketer.”

Senate Committee Report, S. Rep. 102-178-1991 pg. 8; *see also* comments of Senator Hollings upon introduction and passage of S. 1462 (the TCPA) on November 7, 1991 (Senate Record 137-Cong. Rec. 16204, 1991) (“Such consent also could be obtained by a live person who simply asks the called party whether he or she agrees to listen to a recorded message.”) Obviously if the TCPA covers a human who initiated a call such that consent was needed to lawfully play a prerecorded voice during that call, the prerecorded soundboard calls would be covered by the TCPA especially when there was no attempt to ever obtain consent.

Consistent with the legislative intent the FTC found the soundboard calls to be prohibited and explained how it receives numerous complaints regarding the abuse of soundboard technology. This Commission should therefore follow the guidance of Federal Trade Commission’s 2016 Staff Opinion Letter concerning the application of the FTC’s linguistically similar Telemarketing Sales Rule (“TSR”) to soundboard technology. In that letter, FTC staff found:

“the plain language of the TSR provision governing prerecorded calls imposes restrictions on “any outbound telephone call that delivers a prerecorded message.” It is indisputable that calls made using soundboard technology deliver prerecorded messages. As such, under the plain meaning of the words in the TSR’s prerecorded call provision, outbound telemarketing calls using soundboard technology are covered because such calls “deliver a prerecorded message.”

This Commission has repeatedly stated that it seeks to harmonize its rules with the FTC’s TSR. *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*, 27 FCC Rcd. 1830, 1831 (February 15, 2012); *In re Joint Petition Filed by Dish Network*, 28 FCC Rcd. 6574, 6588 (May 9, 2013). The evidence here shows that the FTC staff was correct – soundboard technology is harmful to consumers.